IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4071 OF 2005

EDC Limited. ...Petitioner.

Versus

The Union of India & Ors. ...Respondents.

.....

Mr. V. R. Dhond with Mr.Prakash Panjabi for the Petitioner.
Mr.R. Ashokan for Respondent Nos.1 to 3.

.....

CORAM : A. P. SHAH AND
DR. D.Y. CHANDRACHUD, JJ.

September 1, 2005.

ORAL ORDER (PER DR. D.Y. CHANDRACHUD, J):

The First Petitioner is a Government Company incorporated under the Companies' Act, 1956 and, under a notification issued by the Government of India in the Ministry of Finance on 4th January 1993, is deemed to be a State Finance Corporation under the State Financial Corporations Act, 1951. The share holding of the First Petitioner is held by the Government of Goa and by IDBI. The First Petitioner had granted a term loan of Rs.1,75,00,000/- to a Company by the name of Masitia Steel Ltd., in pursuance of a loan agreement

dated 25th January 2000. The borrower created securities in favour of the First Petitioner by hypothecating its plant and machinery and other moveable assets in respect of its industrial project on a plot of land bearing Survey No.153/2/2/2 at village Dapada, Dadra and Nagar Haveli, Silvassa; and an equitable mortgage of the aforesaid immovable property together with buildings and structures situated thereon by deposit of title deeds. An amount of Rs.1,53,80,300/- is stated to have been lent and advanced to the borrower. Upon defaults in the repayment of the loan, the First Petitioner recalled the loan in exercise of powers conferred by the State Financial Corporation Act, 1951 and thereupon took over possession of the mortgaged and hypothecated assets under Section 29 of the Act. The securities were advertised for sale and the offer of the highest bidder came to be accepted in the amount of Rs.68 lakhs. The assets which were sold were assigned to the Fourth Respondent as nominee of the highest bidder and a Deed of assignment and sale came to be executed on 2nd November 2004 in favour of the Fourth Respondent. Intimation was furnished on 3nd November 2004 to the Resident Deputy Collector of Silvassa and to the Administrator, Collector and

Mamlatdar, Silvassa.

2. On 8th November 2004, a representative of the First Petitioner together with the representative of the Fourth Respondent are stated to have visited the office of the Sub Registrar, Silvassa (the Second Respondent) to lodge the Deed for registration. The Second Respondent declined to do so and is stated to have called upon the First Petitioner to produce certain documents. The First Petitioner by a communication dated 19th November 2004 informed the Second Respondent that the sale has been concluded in pursuance of the statutory rights of the First Petitioner under the State Financial Corporations Act, 1951 and called upon the Second Respondent to complete the registration formalities. The Mamlatdar by a letter dated 6th December 2004 informed the Fourth Respondent that the factory of the original borrower had been sealed by the Administrator on account of non-payment of outstanding electricity dues. The First Petitioner thereupon addressed communications dated 30th December 2004, 4th January 2005, 10th January 2005 and 17th January 2005 inter alia reiterating its contention and furnishing

documents to the Second Respondent so as to facilitate registration. There being no response, a further communication was addressed to the District Registrar (the Third Respondent) on 24th February 2005.

3. These proceedings have been initiated under Article 226 of the Constitution, in view of the refusal of the Second and Third Respondents to register the Deed by which the property has been sold and assigned to the Fourth Respondent in exercise of statutory powers conferred by the State Financial Corporations Act, 1951. On behalf of the Petitioner it has been urged that the scope of the enquiry before the registering authority is defined by Section 34 of the Indian Registration Act, 1908 and Sub-section (3) thereof provides as follows :

> "(3) The registering officer shall thereupon:
>
> -(a) enquire where or not such document was executed by the persons by whom it purports to have been executed;

> -(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
>
> -(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

Moreover, it has been submitted that the State Financial Corporations Act, 1951 has overriding force and effect since Section 46B provides that the Act and any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an Industrial concern or in any other instrument having effect by virtue of any law other than the Act.

4. An affidavit in reply has been filed on behalf of the Second and the Third Respondents. It has been stated in the reply that the Electricity Department of the Union Territory had registered a case of theft against the original borrower and a demand came to be raised

on account of outstanding electricity dues in the amount of Rs.1,32,54,572/-. This demand was impugned in a suit instituted by Masitia Steel Pvt. Ltd. before the Civil Court at Silvassa which was dismissed on 31st January 2004. The demand on account of electricity dues was also challenged before the Administrator who is stated to have confirmed the demand. A recovery certificate was issued by the Executive Engineer on 9th February 2004 which was forwarded to the Mamlatdar for attachment of the property of Masitia Steel Pvt. Ltd. It has been stated that under the Dadra and Nagar Haveli Public Monies (Recovery of Dues) Rules, 1999 framed in exercise of power conferred by Section 6(1) of the Goa, Daman and Diu Public Money (Recovery of Dues) Act, 1986, these dues are liable to be recovered as arrears of land revenue. Masitia Steel having failed to pay the dues, the outstandings are stated to have been entered in the land records as arrears of land revenue. In these circumstances, the action of the Sub Registrar in refusing to accept the document for registration has been sought to be supported. Finally it has been stated in the affidavit that the agreement of assignment dated 2nd November 2004 between the First Petitioner

and the Fourth Respondent inter alia provides that the Fourth Respondent is liable to meet all the liabilities inter alia in respect of rights, rents, taxes, electricity dues, water dues, statutory dues and duties in respect of the assets outstanding upto the date of transfer as may be demanded by any authority or by a Government body. Hence, it has been submitted that in the present case as a result of Clause (5) of the Deed of Assignment, the Fourth Respondent is liable to pay the electricity dues of the original borrower.

5. In the present case, the question that falls for determination before the Court falls within a narrow compass. The only question is as to whether the Second Respondent is justified in refusing to accept the document which was submitted by the First Petitioner and the Fourth Respondent for registration in pursuance of a sale that has been conducted by the First Petitioner in exercise of its statutory powers under the State Financial Corporations Act, 1951. Counsel appearing on behalf of the Second and Third Respondents has been unable to justify the action of the Second Respondent with reference to any provision of the Indian Registration Act, 1908 that would

support the action of refusing to accept and register the document. Section 46B of the State Financial Corporations Act, 1951 provides thus:

> "46B. Effect of Act on other laws.- The provisions of this Act and of any rule or orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the memorandum or articles of association of an Industrial concern or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid, the provisions of this act shall be in addition to, and not in derogation of, any other law for the time being applicable to an industrial concern."

In view of the overriding effect that is given to the provisions of the Act, we are of the view that it was certainly not open to the Second Respondent to refuse registration of the document. We would, however, clarify that this would not preclude the adoption of appropriate proceedings in accordance with law by the Administration of the Union Territory or by any authority competent in law to do so to recover the said outstandings that have remained on account of electricity or other dues. We need not dwell on that aspect of the matter any further save and except to observe that the directions to the Second and Third Respondents to register the Deed executed by

the First Petitioner and the Fourth Respondent shall not come in the way of steps being taken for the recovery of the outstanding electricity and other dues in accordance with law. Accordingly, there shall be a direction in this petition that the Second Respondent shall accept the Deed dated 2nd November 2004 (Exh.C) executed as between the First Petitioner and the Fourth Respondent for registration and to proceed to complete all the formalities for registration in accordance with law. The petition is accordingly disposed of . There shall be no order as to costs.

.....